SOGELEASE ADVANCE (MALAYSIA) SDN BHD

v.

KEMAJUAN TAT YOUNG SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[CIVIL SUIT NO: D2-22-1649-1998]
25 NOVEMBER 1998

CIVIL PROCEDURE: *Jurisdiction - Jurisdiction to try action pertaining to default payments under hire purchase agreements - Whether High Court in Malaya or High Court in Sabah and Sarawak - Whether dependant on where cause of action arose - Courts of Judicature Act 1964, s. 23(1)(a) - Whether cause of action arose at place where payments were to have been made*

CIVIL PROCEDURE: *Jurisdiction - High Court in Malaya - Jurisdiction of High Court in Sabah and Sarawak to try action under s. 23(1)(b) - Whether affected jurisdiction of High Court in Malaya to try same action*

The 5th defendant sought to have this action struck out on the grounds that the High Court in Malaya did not have the jurisdiction to try this action, and that the action should be tried in the High Court in Sabah and Sarawak.

This action arose from a breach of five hire-purchase agreements ('the agreements'), the plaintiff being the owners of the goods hired. The said breach was failure to pay the monthly payments of hire rentals. The 1st defendant was the hirer and had the registered office in Sarawak. The other defendants were the guarantors and they all resided or had places of business in Sarawak. The address of the plaintiff's registered office was in Kuala Lumpur. By virtue of cl. 3(1) of the agreements, the plaintiff could designate any other party or address for payments to be made. However, it had not done so.

The 5th defendant claimed that the agreements were executed in Sarawak, and as such the cause of action arose outside the jurisdiction of the High Court in Malaya. The plaintiff claimed that the cause of action within para. (a) of s. 23(1) of the Courts of Judicature Act 1964, arose in Kuala Lumpur, as the defaults in payment took place in Kuala Lumpur. The 5th defendant then argued that since the default was the failure to pay and since the 1st defendant was resident in Sarawak, the failure to pay occurred in Sarawak and not in Kuala Lumpur. As such, it was claimed, that the cause of action arose in Sarawak and not in the States of Malaya.

Held:

[1] The civil jurisdiction of the High Court in Malaya and that of the High Court in Sabah and Sarawak is set out in s. 23(1) of the Courts of Judicature Act 1964. If any of the paras. (a), (b), (c) and (d) pertaining to the action falls within the local jurisdiction of the High Court in Malaya, then the High Court in Malaya has the jurisdiction to try the action.

[2] The cause of action arose in the States of Malaya. The place where payment was to be made must be regarded as the place where the default in paying occurred. There was no failure to pay until the plaintiff failed to receive payment on the due date. Where there was failure to receive payment, the failure must be taken to have occurred at the place where, according to the agreements, the payment was to be made.

[2a] Since the cause of action arose in the States of Malaya, the High Court in Malaya had the jurisdiction to try the action. There is, therefore, no basis for striking out for want of jurisdiction.

[3] Since the defendants, or even one of the defendants, resided or had his place of business in Sarawak, the High Court in Sabah and Sarawak, by virtue of circumstance (b), would also have had the jurisdiction to try the action. However, that did not affect the jurisdiction of the High Court in Malaya to try the action. What it amounted to was that the plaintiff could have brought this action in either of the High Courts.

[Application dismissed.]

Cases referred to:
Dayasar Corp Sdn Bhd v. CP Ng & Co Bhd [1990] 1 CLJ 262 ***(refd)***
Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 ***(refd)***

Legislation referred to:
Court of Judicature Act 1964, s. 23(1)

For the plaintiff - Lee Poh Chin; M/s PM Tan, Chan & Partners
For the 1st to 4th defendants - KF Low; M/s KK Yong & Assoc
For the 5th defendant - SM Wong (Liza Chan with him); M/s Liza Chan & Co

Reported by Kavitha Gunasegaran

JUDGMENT

Abdul Aziz Mohamad J:

The fifth defendant seeks to have this action struck out on the grounds that the High Court that has jurisdiction to try the action is the High Court in

Sabah and Sarawak and not the High Court in Malaya. The basic question that arises is whether the High Court in Malaya has jurisdiction to try the action. If it has, the grounds for striking out must fail.

The civil jurisdiction of the High Court in Malaya, as well as that of the High Court in Sabah and Sarawak, is set out in s. 23(1) of the Courts of Judicature Act 1964, which provides as follows:

> (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where –
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> (a) the cause of action arose; or
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> (b) the defendant or one of several defendants resides or has his place of business; or
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> (c) the facts on which the proceedings are based exist or are alleged to have occurred; or
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> (d) any land the ownership of which is disputed is situated,
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> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

Applying that provision to the High Court in Malaya, what it means is that if any one of the circumstances in paras. (a), (b), (c) and (d) pertaining to the action falls within the local jurisdiction of the High Court in Malaya, which is the territory comprised in the States of Malaya, then the High Court in Malaya has jurisdiction to try the action.

The claim of the plaintiffs arises from a breach of five hire-purchase agreements in which the plaintiffs were the owners of the goods hired, the breach being failure to pay the monthly hire rentals. The fifth defendant claims that the agreements were executed in Sarawak. The first defendants were the hirer and have their registered office in Sarawak. The other defendants were the guarantors and they all reside or have places of business in Sarawak. The address of the plaintiffs' registered office is in Kuala Lumpur. Clause 3(1) of the agreements provides that the first defendants shall pay the monthly hire rentals without demand "to owner at owner's address or to such other party or at such other address as owner may from time to time designate in writing". The plaintiffs had not designated any other party or address.

It is the stand of learned counsel for the plaintiffs that the cause of action, that is circumstance (a), arose in Kuala Lumpur, and therefore the High Court in Malaya has jurisdiction to try the action. The reasoning is that what gave rise to the cause of action was the first defendants' default in paying the

rentals and the default took place in Kuala Lumpur because the rentals were to be paid in Kuala Lumpur. Learned counsel for the fifth defendant argued that since the default was the failure to pay and since the first defendants were residents in Sarawak, the failure to pay occurred in Sarawak and not in Kuala Lumpur. So the cause of action, it was argued, arose in Sarawak, not in the States in Malaya.

In my opinion the cause of action arose in the States of Malaya. The place where payment was to be made must be regarded as the place where the default in paying occurred. There was no failure to pay until the plaintiffs failed to receive payment on the due date. Where there was failure to receive payment, the failure must be taken to have occurred at the place where, according to the agreements, the payment was to be made.

Since the cause of action arose in the States of Malaya, the High Court in Malaya has jurisdiction to try the action. There is therefore no basis for striking out for want of jurisdiction.

Since the defendants – or even one of the defendants – resides or has his place of business in Sarawak, the High Court in Sabah and Sarawak, by virtue of circumstance (b), would also have jurisdiction to try the action, but that does not affect the jurisdiction of the High Court in Malaya to try the action. What it amounts to is that the plaintiffs could have brought this action in either of the High Courts.

Dayasar Corp. Sdn. Bhd. v. CP Ng & Co. Bhd. [1990] 1 CLJ 262; [1990] 1 MLJ 191, where, according to the Court of Appeal in *Fung Beng Tiat v. Marid Construction Co.* [1996] 2 MLJ 413 at p. 420 G-H, the correct approach was adopted to the question of jurisdiction, was a winding-up petition in which the question arose whether it should have been presented in Kuching, Sarawak. Abu Mansor J (now JCA) based his decision on s. 23(1). As the respondent company resided in Kuching, he held that, by virtue of circumstance (b), the petition should have been filed in the High Court in Sabah and Sarawak. In that case, however, unlike the position in this case, the question did not arise for consideration whether circumstance (a), the cause of action, arose in the States of Malaya so as also to give jurisdiction to the High Court in Malaya to hear the petition.

As the High Court in Malaya has jurisdiction to try this action, I dismiss the striking-out application.